

Application No. 10/821,298
Amendment Dated 10/23/06
Reply to Office Action of 6/22/06

REMARKS

This Amendment is submitted in response to the Office Action mailed on June 22, 2006. In the claims as originally filed, Applicants note that a duplicate claim 24 was presented. Accordingly, Applicants have renumbered duplicate claim 24 as claim 25 and original claims 25-36 have been renumbered as claims 26-37, respectively. Claims 1 and 25-37 as presented herein have been amended, and claim 2 has been canceled without prejudice or disclaimer. Claims 24-31 as presented herein have been withdrawn from consideration pursuant to a restriction requirement raised by Examiner. Accordingly, claims 1, 3-23 and 32-37 remain pending in the present application. Applicants note and appreciate Examiner's indication of the allowability of claims 10-14, 22 and 23. In view of the foregoing amendments, as well as the following remarks, Applicants respectfully submit that this application is in complete condition for allowance and requests reconsideration of the application in this regard.

Applicants submitted corrected formal drawings on September 11, 2006 to overcome the objections raised in the Notice of Draftperson's Patent Drawing Review. Examiner's approval of the corrected formal drawings is respectfully requested.

Claims 1-9, 15-21 and 31-36 stand rejected under 35 U.S.C. §102(b) as being anticipated by McGuire et al., U.S. Patent No. 5,797,981. While Applicants respectfully traverse these rejections, Applicants have amended each of independent

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claims 1 and 32 to more sharply define the claimed invention over the prior art of record and respectfully request that the rejection be withdrawn.

In particular, Applicants have amended each of independent claims 1 and 32 to recite that the shaft is permitted to pivot relative to the attachment piece in a range of axial orientations relative to a longitudinal axis of the attachment piece in response to a side torque being applied to the shaft. As described in Applicants' disclosure, if excessive side forces (e.g., torque) are applied to the surgical driver, the shaft of the driver will pivot or axially angle relative to the attachment piece and the implant mounted to the distal end thereof and redirect the side forces to the attachment piece rather than the implant. The pivoting movement of the shaft indicates to the operator that excess side loading has been applied to the device. This angular freedom minimizes or prevents the transmission of excess or variable-axis forces to the implant (see Page 6, line 28 through Page 7, line 2 and Page 10, lines 8-26, for example).

In contrast, the screwdriver of McGuire et al. as shown in Fig. 1 of the Office Action includes an operating shaft (12) and a drive shaft (14) coupled to a distal end thereof. As shown in Fig. 1, the drive shaft (14) is disposed at an angle relative to the operating shaft (12). However, contrary to the presently claimed invention, the screwdriver (10) of Fig. 1 includes a drive head housing (20) that envelopes the distal end of the operating shaft (12) and a proximal end of the driving shaft (14) so that the drive head housing (20) orients the drive shaft (14) at a **fixed** angular position relative

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to the operating shaft (12) (see Col. 6, line 66 through Col. 7, line 19 and Fig. 1).

Accordingly, Applicants respectfully submit that the operating shaft (12) in Fig. 1 of McGuire et al. is not permitted to pivot relative to the drive shaft (14) in a range of axial orientations relative to a longitudinal axis of the drive shaft (14) in response to a side torque being applied to the operating shaft (12) as recited in each of amended independent claims 1 and 32. Consequently, Applicants respectfully submit that McGuire et al. taken alone, or in combination with the other prior art of record, fails to teach or suggest the combination of elements recited in each of independent claims 1 and 32 and the rejections of these claims should be withdrawn.

Moreover, as claims 3-23 and 33-37 depend from allowable independent claims 1 and 32, respectively, and further as each of these claims recites a combination of elements not taught or suggested by the prior art of record, Applicants submit that these claims are allowable as well.

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Conclusion

In view of the foregoing response including the amendments and remarks, this application is submitted to be in complete condition for allowance and early notice to this affect is earnestly solicited. If there is any issue that remains which may be resolved by telephone conference, the Examiner is invited to contact the undersigned in order to resolve the same and expedite the allowance of this application.

In accordance with 37 C.F.R. §1.17(a)(1), Applicants have submitted herewith the \$120.00 fee for the one (1) month extension. If any additional fees are necessary to complete this communication, the Commissioner is hereby authorized to charge any underpayment or fees associated with this communication or credit any overpayment to Deposit Account No. 23-3000.

Respectfully submitted,

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